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1: CV 01-0181

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

HABEEB SALEEM,

Plaintiff

v.

MARTIN F. HORN, et al.,

Defendants

Civil Action No.

**FILED
HARRISBURG**

JAN 29 2001

MARY E. D'ANDREA, CLERK
Per _____
DEPUTY CLERK

NOTICE OF REMOVAL

Defendants, Martin F. Horn, Philip L. Johnson and Deputy
Secretary Fulcomer, by and through their attorney, Victoria S. Freimuth,
Assistant Counsel, Pennsylvania Department of Corrections, pursuant to 28
U.S.C. § 1441(a) and (b), hereby remove the above-captioned action from
the Commonwealth Court of Pennsylvania to the United States District
Court for the Middle District of Pennsylvania. Grounds that support a
removal are as follows:

1. On or around December 29, 2000, Plaintiff, Habeeb Saleem, filed a Petition for Writ of Habeas Corpus in the Court of Common Pleas of Allegheny County. A true and correct copy of the Petition is attached hereto as Exhibit A.
2. On December 29, 2000, a copy of Plaintiff's Petition was served on Superintendent Johnson at SCI-Pittsburgh by institutional mail.
3. On January 8, 2001, the Commonwealth Court of Pennsylvania entered an order transferring the Petition for Habeas Corpus back to the Court of Common Pleas of Allegheny County.
4. As of January 22, 2001, the record in the above-captioned matter had not been returned to the Allegheny Court of Common Pleas.
5. Plaintiff contends that his confinement in the Long-Term Segregation Unit (LTSU) at SCI-Pittsburgh is arbitrary, violative of due process and constitutes cruel and unusual punishment. (See Petition, ¶ 6)

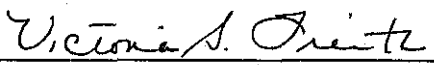
6. Plaintiff claims that he was deprived of due process during disciplinary hearings, which are provided under the Department's directive DC-ADM 801 as promulgated by Defendant Horn. Plaintiff asserts that he was not provided adequate hearing, representation, witnesses or an impartial hearing examiner. (See Petition, ¶ 7(c))
7. Plaintiff alleges that his confinement is arbitrary and that he is a mental health patient and has been denied treatment for his mental health problems. (See Petition, ¶ 7(d))
8. Plaintiff also alleges that his confinement is cruel and unusual and that he has been made to suffer atypical and significant hardship in relation to the ordinary incidence of general population prison life at SCI-Pittsburgh. (See Petition, ¶ 9)
9. Plaintiff seeks an Order and declaration from the Court declaring Defendants' acts and regulations in violation of state and federal laws and to order that Plaintiff removed from his unlawful confinement and placed in general population of SCI-Pittsburgh. (See Petition, ¶ 12)

10. Plaintiffs' Petition raises issues of federal laws and asserts claims for violation of due process and cruel and unusual punishment. (See Petition, ¶¶ 6, 12)
11. While Plaintiff does not expressly identify it as a basis for their federal claim, they would appear to be able to raise it, pursuant to 42 U.S.C. § 1983.
12. This Court has original jurisdiction over federal claim pursuant to 28 U.S.C. §§ 1331 and 1343, and the action is removable to this Court pursuant to 28 U.S.C. § 1441(a) and (b).
13. Notice of Removal has been provided to the Plaintiff, who is proceeding pro se and the Prothonotary of the Commonwealth Court of Pennsylvania, as well as the Clerk of Courts of Allegheny County. A true and correct copy of the Notice is attached hereto as Exhibit B.
14. Defendants expressly do not waive any defense, including the defense of sovereign immunity, qualified immunity or 11th Amendment immunity in filing this Notice of Removal.

CONCLUSION

Defendants respectfully remove the aforementioned action from the Commonwealth Court of Pennsylvania, docket number 9 M.D. 2001 to this Court.

Respectfully submitted:


Victoria S. Freimuth
Assistant Counsel
Attorney I.D. 77183

PA Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: January ⁵/₂₄, 2001

IN THE COMMON PLEAS COURT OF ALLEGHE COUNTY
PENNSYLVANIA

Habeeb Saleem,
Petitioner

Criminal Division

v.

Docket No. _____

Martin F. Horn, Secretary;
Philip L. Johnson;
Deputy Secretary Fulcomer,
Respondents

RECEIVED
SCI-PITTSBURGH

DEC 29 2000

SUPERINTENDENT
ASSISTANT II

PETITION FOR WRIT OF HABEAS CORPUS

1. This Court has venue jurisdiction under Pa. R. Crim. P. 1701(b) and 42 Pa. C.S.A. §931, to hear this Petition for writ of habeas corpus. Accord Bronson v. Domovich 628 A.2d 1177 (Pa. Super. 1993).

2. Petitioner is a state mental health prisoner presently confined at the state correctional institution at Pittsburgh, 3001 Beaver Ave. Pitts, Pa. 15233.

3. Respondents are Martin F. Horn, secretary of the Department of Corrections for Pennsylvania and his agents Deputy Secretary Fulcomer both located at 2520 Lisburn Rd. Camp Hill, Pa. 17011, and Philip L. Johnson, superintendant of Pittsburgh state prison who is located at 30001 Beaver Ave. Pitts, Pa. 15233.

4. Respondent Horn is responsible for the promulgation of policies and practices for the Department of Corrections, and has promulgated and/or adopted the cited policies and practices herein.

5. Respondent Fulcomer as regional Secretary and Johnson as Superintendent are responsible for implementing and carrying out Horn's policies and practices, and did so in the herein instant case matter.

6. Petitioner contents that his present fact and condition of confinement in the Restricted Housing Unit's ("RHU") Long Term Problematic Segregation Unit (LTSU)", program, is arbitrary, violative of due process, and constitute cruel and unusual punishment.

7. In support of these contentions, petitioner alleges the following facts:

a) On _____, and on numerous occasions prior thereto, disciplinary hearings were conducted pursuant to DOC's directive DC-ADM 801, which regulation was adopted and/or promulgated by respondent Horn, whereat petitioner was sentenced to the RHU under disciplinary custody confinement, that is ongoing for six years.

b) On April 10, 2000 petitioner was also confined to the RHU's LTSU program, pursuant to DOC's Policy #6.5.1. effective date Sept. 1, 2000, promulgated by respondent Horn.

EXHIBIT

A

c) On the above cited dates, petitioner was deprived of due process of law, in that, he was not provided an adequate hearing, representation, witnesses in his behalf, an impartial Hearing Examiner, in accord with 2 Pa.C.S. §101, and 37 Pa. Code 93.11.

d) Petitioner's confinement to the RHU is arbitrary, as he as a mental health patient has been denied and deprived of treatment for his mental health problems, and refused confinement to a mental health unit, and instead placed in inappropriate disciplinary custody housing as a result of his mental health caused behavior.

e) As a result of respondents' policies and practices, petitioner has suffered and is suffering injuries consisting of, but not limited to, sensory deprivation, depression, mental and emotional anxiety and stress, weight lost, hair lost, muscle atrophy, fatigue, high blood pressure, insomnia, and lost of sanity.

8. Petitioner has a liberty interest under 37 Pa. Code 93.11(b), and 2 Pa.C.S. 01 et seq. to a due process hearing and was not given in accord with law.

9. Petitioner's RHU confinement is cruel and unusual, and as he has been made to suffer atypical and significant hardship, in relationship to the ordinary incidents of general population prison life at SCI-Pittsburgh.

10. Petitioner's RHU confinement is further cruel and unusual as the sanction of lengthy disciplinary confinement imposed, is excessive, and goes beyond what is necessary to achieve a perceived penological interest.

11. Petitioner has exhausted his prison administrative remedies to no avail.

12. Petitioner seeks an order and declaration from this Court, declaring respondents acts, actions, and regulations in violation of state and federal laws, and order petitioner be removed from his unlawful confinement and placed in the general population of SCI-Pittsburgh, or an appropriate mental health unit.

Wherefore, by reason of the foregoing allegations, the Court should set an evidentiary Hearing date, to inquire into the cause of the commitment and detention of the petitioner, and that thereupon, to grant his petition for habeas corpus relief, and order his discharged from solitary confinement to general population, or an appropriate mental health unit.

Respectfully submitted,

Habib Saleem

Habib Saleem, pro se.

P.O. Box 99901

Pitts, Pa. 15233

CERTIFICATE OF SERVICE

I, hereby certify that I caused the foregoing pleading to be served upon the below named parties this 27 day of 12/27 2000, by depositing a copy of same in the prison mail box first class mail postage paid addressed to:

By: Salim Saleem

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

HABEEB SALEEM,

Petitioner

v.

MARTIN F. HORN, et al.,


Respondents

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NOTICE

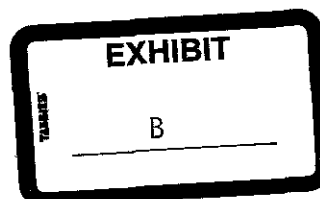
To: Habeeb Saleem, DE-2340
SCI-Pittsburgh
3001 Beaver Avenue
P.O. Box 99901
Pittsburgh, PA 15233

Please take notice, pursuant to 28 U.S.C. § 1446(d), that a Notice of Removal was filed in the United States District Court for the Middle District of Pennsylvania on January 24, 2001. I certify that the attached copy of the Notice of Removal is a true and correct copy of the original which was filed in the Office of the Clerk in the United States District Court for the Middle District of Pennsylvania.



Victoria S. Freimuth
Assistant Counsel
Attorney I.D. 77183

PA Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
Dated: January 24, 2001



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

HABEEB SALEEM,

Petitioner

v.

MARTIN F. HORN, et al.,

Respondents

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No. 9 M.D. 2001

NOTICE

To: Daniel Schucker, Prothonotary
Commonwealth Court of Pennsylvania
South Office Building, 6th Floor
Harrisburg, PA 17120-0002

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V.S. Freimuth

Victoria S. Freimuth
Assistant Counsel
Attorney I.D. 77183

PA Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
Dated: January 24, 2001

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

HABEEB SALEEM,

Petitioner

v.

MARTIN F. HORN, et al.,

Respondents

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: No. 9 M.D. 2001
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NOTICE

To: Joyce Lee Itkin, Clerk of Court
Allegheny County Court of Common Pleas
114 Courthouse
436 Grant St.
Pittsburgh, PA 15219-2495

Please take notice, pursuant to 28 U.S.C. § 1446(d), that a Notice of Removal was filed in the United States District Court for the Middle District of Pennsylvania on January 24, 2001. I certify that the attached copy of the Notice of Removal is a true and correct copy of the original which was filed in the Office of the Clerk in the United States District Court for the Middle District of Pennsylvania.

V.S. Freimuth

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Camp Hill, PA 17011
(717) 731-0444
Dated: January 24, 2001

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

HABEEB SALEEM,

Plaintiff

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MARTIN F. HORN, et al.,

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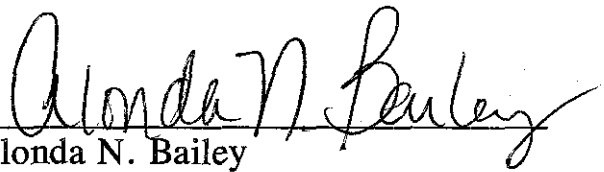
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CERTIFICATE OF SERVICE

I hereby certify that I am this day forwarding a true and correct copy of the foregoing Notice of Removal upon the person(s) in the manner indicated below:

Service by first-class mail
Addressed as follows:

Habeeb Saleem, DE-2340
SCI-Pittsburgh
3001 Beaver Avenue
P.O. Box 99901
Pittsburgh, PA 15233


Alonda N. Bailey
Clerk Typist 2

PA Department of Corrections
55 Uteley Drive
Camp Hill, Pennsylvania 17011
(717) 731-0444
Dated: January 24, 2001